

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-0296V

Filed: July 18, 2016

Unpublished

JENNIFER S. HELBERT,
Administrator of the estate of
NADARA SHIVES, deceased

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Attorneys' Fees and Costs;
Special Processing Unit ("SPU")

Ronald C. Homer, Conway Homer & Chin-Caplan, P.C., Boston, MA, for petitioner.
Glenn A. MacLeod, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On March 23, 2015, Nadara Shives filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Ms. Shives alleged that as a result of an influenza ("flu") vaccination on September 20, 2013, she suffered a shoulder injury related to vaccine administration ("SIRVA"). On September 16, 2015, a decision issued awarding compensation to Ms. Shives based on the respondent's proffer. (ECF No. 19).

On January 8, 2016, petitioner's attorney filed a motion for attorneys' fees and costs, wherein he noted that Ms. Shives passed away on December 29, 2015. (ECF

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

No. 26). Petitioner's attorney requested attorneys' fees in the amount of \$15,513.00 and attorneys' costs in the amount of \$868.20 for a total amount of \$16,381.20. *Id.*

Subsequently, petitioner's attorney was required to expend additional resources to identify a legal representative for Ms. Shives's estate. On June 8, 2016, petitioner's counsel filed documents identifying Ms. Shives's daughter, Jennifer S. Helbert, as legal administrator of Ms. Shives's estate. (ECF No. 34). Thereafter, motions to amend the case caption and for substitution of a proper party were filed. (ECF Nos. 35 and 37). The motions were granted.

On June 16, 2016, petitioner's attorney filed an amended motion for attorneys' fees and costs. (ECF No. 38). The amended motion requests attorneys' fees in the amount of \$20,937.00 and attorneys' costs in the amount of \$1,039.15 for a total amount of \$21,976.15. *Id.* In compliance with General Order #9, petitioner filed a signed statement indicating that all litigation costs were borne by her attorney.

On January 25, 2016, and July 5, 2016, respondent filed responses to petitioner's motions raising no specific objections to the number of hours billed or the costs claimed, and deferring to the undersigned's determination of the amount of reasonable attorneys' fees and costs. (ECF Nos. 27 and 40).

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request and respondent's deference to the undersigned's determination, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

Accordingly, the undersigned awards the total of \$21,976.15³ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel Ronald C. Homer.

The clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.